

March 8, 2016

DRAFT – FOR DISCUSSION PURPOSES ONLY

249 CMR 5.00: Ethical Standards and Professional Conduct

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5.01: Requirement to Respond to Board

A licensee shall respond within 30 days to a written communication from the Board or its designee and shall make available to the Board any relevant and authorized records with respect to an inquiry or complaint about the licensee's professional conduct. The 30-day period commences on the date the Board sends the communication by registered or certified mail with return receipt requested to the licensee's last known address. It is the responsibility of the licensee to notify the Board, in writing, of any change of his mailing address.

5.02: Advertising and Professional Notices

(1) A licensee shall not advertise for patients in a manner that is false, deceptive or misleading.

~~(2) A licensee may advertise in electronic media, including television and radio, provided that he maintains a complete, accurate and reproducible version of the audio and visual contents of that advertising for a period of three years. The licensee must furnish the complete copy of this advertising to the Board upon request. The cost of maintaining and providing this advertising copy shall be borne by the licensee.~~

~~(3) A licensee shall include in an advertisement, professional notice, or any other professional printed material, his name, business address and designation which shall be limited to the following: Professional Degree (D.P.M.), Podiatrist, Practitioner of Podiatric Medicine and Surgery, or Podiatric Physician.~~

~~(4) Advertising of group practices (including corporations, partnerships, agencies or associations) is permitted. Such advertisement shall include the name of at least one licensee, the business address, and the designation as a podiatrist. A group practice shall, upon request, provide a listing of all currently licensed podiatrists in the group practice.~~

~~(5) A licensee may consult with the Board concerning any proposed advertising for its opinion and prior written approval.~~

5.03: ~~Unprofessional Conduct~~Grounds for Disciplinary Action

The Board may impose discipline on a licensee if it is determined, after a consent agreement between the parties or an opportunity for an adjudicatory proceeding in accordance with M.G.L. c. 30A and 801 CMR 1.00 et seq., that such licensee has:

~~(1) The following acts are deemed to constitute "Unprofessional Conduct" within the meaning of M.G.L. c. 112, §§ 18 and 19:~~

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(a) engaged in conduct which constitutes willful or negligent failure to comply with substantial provisions of federal, state, or local laws, rules or regulations governing the practice of Podiatric Medicine.:-

(b) been convicted of a crime involving moral turpitude;

(cb) practiced while under the influence of alcoholic beverages or narcotic drugs;

(de) engaged in unprofessional conduct:-

(ed) engaged in conduct in the practice of Podiatric Medicine which evidences moral unfitnes to practice the profession;

(fe) engaged in deceit, malpractice and/or gross misconduct in the practice of podiatry;

(gf) engaged in Any act or acts constituting gross incompetence in the practice of podiatry.

(hg) Failure to report to the Board in writing any of the following within 30 days of the finalization of action:

1. Disciplinary action by a state licensing board in another jurisdiction;
2. The denial, suspension, or revocation of staff privileges, employment, or appointment in a hospital or other health care institution;
3. Resignation from a medical staff in lieu of disciplinary action;
4. Disciplinary action taken by any governmental authority, health care facility, and/or professional medical association;
5. Having been a criminal defendant in any criminal proceeding other than minor traffic offenses;
6. Findings being made against the licensee in connection with a medical malpractice proceeding or settlement in a medical malpractice proceeding; and
7. Suspension, revocation, restriction of, or surrender of a privilege to possess, dispense, or prescribe controlled substances.

(ihe) Exercised undue influence on the patient by methods including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient for the financial gain of the practitioner or a third party.

(jid) Directly or indirectly offereding, giveneing, soliciteding, receiveding, or agreeding to receive any fee or other consideration to or from a podiatrist or other licensed health care professional or any laboratory or other medical service of any kind for the referral of a patient in connection with the performance of podiatric services. Nothing herein shall prohibit a podiatrist from:

1. negotiating with or participating in a health maintenance organization, preferred provider organization or other health care delivery system, or in an agency established to provide patients with referrals for podiatric and other medical services; or
2. from receiving a fee for any such participation.

(e) Conduct in the practice of Podiatric Medicine which evidences moral unfitnes to practice the profession.

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~~(k)~~ (f) Willfully ~~filed~~ed inaccurate or untrue statements on the licensee's registration renewal questionnaire ~~as well as or~~ willfully ~~made~~ed or ~~filed~~ed a false report, or ~~failed~~ed to file a report required by law.

~~(l)~~ (g) ~~Practiced~~ed or ~~offer~~ed to practice beyond the scope permitted by law, or ~~accept~~ed and ~~performed~~ed professional responsibilities which the podiatrist knows or has reason to know that he or is not competent to perform.

~~(m)~~ (h) ~~Delegated~~ed podiatric medical responsibilities to a person when the podiatrist delegating such responsibilities knows or has reason to know that such person is not qualified by training, by experience, or by licensure to perform them.

(n) Engaged in conduct subjecting licensee to discipline under G.L. c. 112, s. 61, or 65 through 65E; or

~~(i) Failure to repay student loans.~~

~~(o)~~ Engaged in Gross Misconduct or Deceit as defined in 249 CMR 5.04.

5.04: Gross Misconduct and Deceit

Gross misconduct and/or deceit in violation of M.G.L. c. 112, § 61 may include, but not be limited to, the following acts:

(a) Making false statements to the Board; or any attempt to deceive, or attempt to make misrepresentations to the Board;

(b) Failure to provide documentation for care rendered in a facility; or

(c) Filing documentation with third parties which is not substantiated by patient histories and/or field.

5.05: Podiatrist's Responsibility to the Patient

(1) A licensee shall maintain a podiatric record for each of his or her office patient(s) only, which is adequate to enable the licensee to provide proper diagnosis and treatment. A licensee must maintain a patient's podiatric medical record for five years from the date of the last visit provided that the patient was seen in the podiatrist's office. In lieu of maintaining the patient's records, the podiatrist may choose to turn over the office chart or a copy of the original chart to the patient. A registered podiatrist is not responsible for any patient records of any kind if the patient was not seen in the podiatrist's office.

(2) A licensee shall provide a patient or, upon patient's request, another licensee or another specifically authorized person, with the following, provided that the entire chart or a copy of the entire chart has not already been surrendered to the patient:

(a) A summary which includes all relevant data, of that portion of the patient's podiatric medical record which is in the licensee's possession, or a copy of that portion of the patient's entire

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podiatric medical record which is in the licensee's possession. It is within the licensee's discretion to determine whether to make available a summary or a copy of the entire podiatric medical record.

- (b) A copy of any previously completed report required for third party reimbursement.
- (3) A licensee may charge a reasonable fee for the expense of providing the material enumerated in 249 CMR 5.05(2); however, a licensee may not require prior payment of the charges for the podiatric medical services to which such material relates as a condition for making it available.
- (4) The podiatrist will not subject any patient for examination or treatment for research, educational or informational purposes without the patient's written approval.
- (5) No patient shall be treated for a new or preexisting condition without the benefit of an evaluation and management service, which shall be performed by the treating podiatrist.
- (6) Privacy will be afforded the patient during the podiatric medical treatment or other rendering of care within the capacity of the office or other facility to provide.
- (7) The podiatrist will obtain informed consent of the patient to the extent provided by law.
- (8) The patient may, upon request, examine and receive an explanation of his bill, including laboratory charges, pharmaceutical charges and third party credits regardless of the source of payment.
- (9) The patient will be afforded the confidentiality of all office records and communications to the full extent provided by law.
- (10) The patient shall have all reasonable requests responded to promptly, courteously and adequately within the capacity of the podiatrist to respond.

**REGULATORY AUTHORITY**

249 CMR 5.00: M.G.L. c. 112, §§ 16, 17A, 19 and 61 through 65.